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ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

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Working Group to Prepare  
the Draft American Declaration on  
the Rights of Indigenous Peoples

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**DOCUMENT OF THE CHAIR ON PROPOSALS REGARDING WORK FOR  
THE SPECIAL MEETING**

dedicated to evaluating and strengthening the negotiation process and proposing specific measures  
for addressing the topics in the American Declaration on the Rights of Indigenous Peoples  
December 2008

**Working Group to Prepare the  
Draft American Declaration on the Rights of Indigenous Peoples**

- I. STATUS OF NEGOTIATIONS
- II. INFORMAL CONSULTATIONS

*Outcome of the informal consultations called for in operative paragraph 3.b of  
resolution AG/RES. 2368 (XXXVIII-O/08)*

## **PRESENTATION**

Pursuant to resolution AG/RES. 2368 (XXXVIII-O/08), the Chair drew up this working document for consideration by the Working Group at the special meeting dedicated to evaluating and strengthening the negotiation process and proposing specific measures for addressing the topics in the American Declaration on the Rights of Indigenous Peoples, with a view to presenting the conclusions of the informal consultations held with those involved in the process.

Operative paragraph 3.b of the aforementioned resolution reads as follows:

3. To request the Permanent Council to instruct the Working Group to:
  - b. Ensure that the Chair of the Working Group engages in informal consultations with those involved in the process and presents the conclusions thereof in a document for the special meeting for submission to the Working Group for consideration.

The working document of the Chair consists of two sections: the first presents the status of negotiations beginning with the document “Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples” (GT/DADIN/doc.334/08); the second focuses on points resulting from the informal consultations.

At the conclusion of the special meeting, the Chair of the Working Group, having noted the results and conclusions of said meeting, will make proposals he deems appropriate to strengthen the negotiation process and specific measures to address the topics in the American Declaration on the Rights of Indigenous Peoples.

### **I. STATUS OF NEGOTIATIONS**

#### **1. Outline of the draft American Declaration on the Rights of Indigenous Peoples**

Based on the document “Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples” (GT/DADIN/doc.334/08 rev. 1), of April 25, 2008, the Chair presents the following outline, organized, for the sake of clarity, according to:

- a) Articles agreed to by consensus, “C”<sup>1/</sup> (8 provisions);
- b) Articles approved, “A”<sup>2/</sup> (6 provisions);
- c) Articles pending, “P” (25 provisions).
- d) Topics of the draft American Declaration on the Rights of Indigenous Peoples present in the United Nations Declaration on the Rights of Indigenous Peoples.

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1. Articles agreed to by consensus prior to the Eleventh Meeting of Negotiations in the Quest for Points of Consensus of April 2008 (C)
2. Articles approved at the Eleventh Meeting of Negotiations in the Quest for Points of Consensus of April 2008 (A)

- e) Distinctive topics contained in the document “Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples” (GT/DADIN/doc.334/08) rev. 1 of April 25, 2008.

Section	Articles	Status OAS			United Nations Declaration <sup>3/</sup> Art.	Distinctive topics contained in the current Record of the Current Status document
		C	A	P		
<b>ONE</b> Indigenous Peoples. Scope of Application	<b>I.</b> Self-identification as indigenous peoples	√			Art. 33	
	<b>II.</b> Multicultural and multilingual character	√			Art. 16, par. II.	
	<b>III.</b> Self-determination.			X	Preamble, Arts. 2, 3, 4	
	<b>IV.</b> Respect for the territorial integrity, sovereignty, and political independence of the States. <b>PCT</b>			X	Art. 46	
<b>TWO</b> Human Rights and Collective Rights	<b>V.</b> Full effect and observance of human rights		√		Art. 1	
	<b>VI.</b> Collective rights. <b>PAC</b>			X	Preamble, Art. 7	
	<b>VII.</b> Gender equality	√			Arts. 22, 44, 21	
	<b>VIII.</b> Right to belong to the indigenous peoples			X	Arts. 2, 9, 33, 35	
	<b>IX.</b> Juridical personality	√			-	Full recognition of juridical personality
	<b>X.</b> Rejection of assimilation	√			Art. 8	
	<b>X. bis.</b> Protection against genocide	√			Art. 7	

3. United Nations Declaration on the Rights of Indigenous Peoples (adopted by the United Nations General Assembly on September 13, 2007).

	<b>XI.</b> Guarantees against racism, racial discrimination, xenophobia, and other related forms of intolerance		√		Preamble, Arts. 2, 15	
<b>THREE</b> Cultural Identity	<b>XII.</b> Right to cultural identity. <b>PCT</b>			X	Arts. 33, 2, 8, 9, 11, 28	Fair and equitable compensation
	<b>XIII.</b> Systems of knowledge, language and communication. <b>PAC</b>			X	Arts. 13, 16	
	<b>XIV.</b> Education. <b>PAC</b>			X	Preamble, Arts. 14, 15	
	<b>XV.</b> Indigenous spirituality. <b>PCT</b>			X	Art. 12	
	<b>XVI.</b> Indigenous family. <b>PAC</b>			X	Preamble	Maintenance and promotion of the family systems of the indigenous peoples
	<b>XVII.</b> Health.			X	Arts. 24, 29	
	<b>XVIII.</b> Right to protection of a healthy environment.			X	Preamble, Arts. 29, 27	
<b>FOUR</b> [Organizational and Political Rights]	<b>XIX.</b> [Rights of association, assembly, and freedom of expression and thought]			X	Arts. 36, 12	
	<b>XX.</b> Right to [autonomy] or [and] self-government.			X	Arts. 4, 5, 18, 19, 33	
	<b>XXI.</b> Indigenous law and jurisdiction.			X	Arts. 13, 19, 34	
	<b>XXII.</b> Contributions of the indigenous legal and organizational systems.			X	Arts. 13, 19, 34	

	<b>XXIII.</b> Treaties, agreements, and constructive arrangements.			X	Preamble, Art. 37	
<b>FIVE Social, Economic, and Property Rights</b>	<b>XXIV.</b> Traditional forms of property and cultural survival. Right to land, territory, and resources.			X	Arts. 25, 26, 27, 28, 32	
	<b>XXV.</b> On transfers and relocations.			X	Arts. 10, 8	
	<b>XXVI.</b> Indigenous peoples in voluntary isolation or initial contact			X	-	Right of indigenous peoples to remain in voluntary isolation or initial contact
	<b>XXVII.</b> Labor rights.			X	Arts. 17, 21	
	<b>XXVIII.</b> Protection of cultural heritage and intellectual property.			X	Art. 31	
	<b>XXIX.</b> Right to development.			X	Arts. 20, 23, 32, 39	
	<b>XXX.</b> Right to peace, security and protection in the event of armed conflicts.			X	Preamble, Arts. 7, 30	
<b>SIX General provisions</b>	<b>XXXI.</b> Full enjoyment of the Rights recognized in this Declaration.			X	Preamble, Arts. 38, 39	Full enjoyment of spiritual rights
	<b>XXXII.</b> Equal guarantees for indigenous men and women	√			Arts. 41, 44	Gender equity
	<b>XXXIII.</b> Prompt judicial remedies		√		Art. 40	
	<b>XXXIV.</b> Resolution of disputes.			X	Art. 40	
	<b>XXXIV.bis.</b> Proper interpretation.	√			Art. 37	
	<b>XXXV.</b> Application, respect and protection			X	Arts. 41, 42	

	<b>XXXVI.</b> Consideration of the spirit and purpose		√		Preamble	
	<b>XXXVII.</b> Principles for interpretation and application.			X	Art. 46	
	<b>XXXVIII.</b> Enjoyment of present and future rights	√			Art. 45	
	<b>XXXIX.</b> Minimum standards	√			Preamble, Art. 43	

## **II. INFORMAL CONSULTATIONS**

### **1. Possible solutions for general consideration**

With a view to achieving a declaration that could be agreed to by consensus, the Chair notes that there is agreement regarding the following steps:

- Establish clear negotiating rules, include revised flexible working procedures.
- Simplify the language and level of detail in the Declaration.
- Favor consensus as a means of achieving a strong instrument that will express the genuine views of the Americas in this regard.
- Consider international law as the standard for considering the draft American Declaration.
- Use the Record of the Current Status of the draft OAS Declaration as the basis and endeavor to move forward with pending issues.
- Provided there is consensus, the draft American Declaration should refer to the specific characteristics of the region and include innovative and different ideas compared with those in the United Nations text, in order to focus on the distinctive characteristics of the region.
- Ensure that the provisions of the different articles are consistent with one another.
- Time considerations, political expectations, and budgetary matters oblige us to show progress in our negotiations and to proceed without further delay, all the while remaining objective and realistic. Concentrate on picking up our pace in order to resolve differing views.

### **2. Status of complex topics**

It is necessary to focus in the Special Meeting on complex issues, so as to propose possible ways of out impasses in the negotiations that could form a bottleneck. Thus, in the Chair's view, it is necessary to explore such alternatives as:

- Identify complex matters in the U.N. Declaration as a necessary reference for the draft OAS Declaration.
- Try not to re-discuss these matters (which may be considered as having been addressed in the broader universe of indigenous rights).
- Avoid any qualitative "ranking" of the OAS versus U.N. Declarations and their articles.

- Look for complementarity, not competitiveness, of the declarations, enriching the contents with the distinctive characteristics of the Hemisphere.
- In no way should our efforts detract from the strength of the United Nations Declaration.
- This Declaration needs to be geared to the practical implementation of its provisions.

### **3. Distinctive topics related to specific characteristics of the region**

The Chair proposes the following list of items that could help identify distinctive topic related to specific characteristics of the region and provide “value-added” to this declaration and therefore justify its formulation:

1. The situation of the urban indigenous population and rural communities
2. The situation of indigenous migrants
3. The conservation of indigenous communities in the face of environmental degradation
4. Crosscutting aspects to be considered, such as education, health, habitat, and protection against discrimination

#### **1. The situation of the urban indigenous population**

Indigenous people generally move within national borders in search of better living conditions—an aspiration that is, however, difficult to achieve, especially for at-risk community groups, such as women, children, the elderly, and persons with disabilities. More often than not, urban centers do not provide necessary conditions for the indigenous to enjoy their basic rights nor do they facilitate their social inclusion. At the same time, ties to their community and their lands are lost.

#### **2. The situation of indigenous migrants**

The difficulties faced by indigenous migrants in becoming integrated make them vulnerable and frequently the target of a two-fold discrimination—because they are foreign and indigenous. This makes it difficult for them not only to become adapted in the host country but also to maintain and protect their ancestral cultures and traditions.

#### **3. Conservation of indigenous communities in the face of environmental degradation**

An effort must be made to prevent the loss of the indigenous communities’ special ties to nature, both spiritually and in terms of their dependence on nature for their livelihood. Environmental changes, modifications in flora and fauna, the effects of drought on their lands, and variations in the availability of traditional food sources, among other things, constitute a threat and a danger for the survival of peoples not only in the Americas but throughout the world.



**4. Crosscutting aspects**

Access to education, health, and habitat (housing, etc.) services and protection against discrimination must be secured in the inter-American instrument, in order to guarantee decent conditions for the survival of indigenous populations.